SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-264
District Docket No. XIV-05-504E

IN THE MATTER OF	:
BEN ZANDER	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 18, 2007

Decided: March 30, 2007

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter came before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's criminal conviction in New Jersey for his involvement in a health plan administration company's scheme to defraud 2017 victims out of $24,678,000.62, namely, acting as an accessory after the fact to mail fraud, in violation of 18 U.S.C.A. §3. We recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1984. On September 30, 2005, he was temporarily suspended, based on his guilty plea in this matter. In re Zander, 185 N.J. 164 (2005). He remains suspended to date.

In 2004, respondent received an admonition for grossly neglecting a trademark case and then failing to communicate the status of the matter to his client. In the Matter of Ben Zander, DRB 04-133 (May 24, 2004).

Respondent was in-house counsel for Meridian Benefit, Inc. ("Meridian"), a third party health plan administrator located in Wayne, New Jersey. In that capacity, as the company's attorney, he reviewed Meridian contracts, promotional materials, and company practices, replied to inquiries from clients and regulators, and rendered legal advice to Meridian's sole shareholder/president, Donald Ruth.

According to the government information,

> [a]s a third party administrator of health benefit plans, Meridian solicited employers ("participant groups") for the purpose of enrolling them and their employees ("participants") into its plan. Meridian also negotiated discount group rates with providers of medical and related services and then processed claims submitted by participants for services rendered by providers. Meridian was also responsible for paying qualifying claims according to established fee schedules. Funds to pay these claims were collected, in advance and on a monthly basis, from the participant

groups which either paid the amount due or collected it from their participants. The amount to be paid varied based on the make-up of the participants and was purportedly determined by Meridian based on actuarial studies that were to be performed for each participant group. Once the amount was determined, it was fixed for the period of the agreement, generally one year.

c. To solicit business, Meridian enlisted the services of numerous brokers and agencies ('sales agents') in various parts of the United States. Meridian provided these sales agents with promotional materials describing the benefit plan offered as well as with standard-form-agreements setting forth the scope of coverage, the terms, conditions and the payment schedules of Meridian's benefit plan. In his capacity as corporate counsel, [respondent] reviewed both the agreements and the promotional materials.

d. In these materials, Meridian promised and represented, both directly and indirectly: (1) that funds collected from each participant group would be segregated, held in separate trust accounts and used only to pay that particular participant group's claims and (ii) that claims exceeding the amount due and paid by a participant group ('excess loss claims') were covered by 'stop-loss claims' and/or re-insurance which were included in the benefits package.

e. The two features described in the prior paragraph made the Meridian plan unique in the market place and were the major inducements to participant groups to do business with Meridian. By virtue of the trust accounts, funds remitted by participant groups remained in their control and, with stop-loss/re-insurance coverage paying excess loss claims, costs to both participant groups and participants were pre-determined and fixed for the duration of the agreement. Meridian successfully enrolled many participant groups

over a short period of time based on the uniqueness of these two features.

f. Initially, the participant groups were small companies, generally with fewer than 10 employees. However, as Meridian expanded its sales efforts, the major part of Meridian's business consisted of "employee leasing companies," which were separate entities formed by the merger of combination of owners and/or employees from several small companies in order to maximize their ability to obtain more affordable medical plans and other benefits.

Mail Fraud Scheme

Diversion of Participants' Funds

2. Instead of maintaining separate trust accounts for each participant group, Meridian's sole shareholder-president directed that funds received from participant groups be diverted and placed into a single general bank account which was maintained in Meridian's name and was always controlled by the sole shareholder-president. By this diversion and commingling of funds, Meridian's sole shareholder-president was able to and did use these funds to pay Meridian's expenses which, in many instances, were excessive and included personal expenses for the sole shareholder president such as, clothing, personal entertainment, travel, a house in Florida and a boat in addition to an income from Meridian of more than $1,500,000 during the course of Meridian's operation.

3. In response to inquiries from participant groups relative to their trust funds, [respondent] assured them, both verbally and in writing, that separate trust accounts were established and funded for each group. By virtue of these false assurances, [respondent] sought and intended to conceal Meridian's diversion of funds and, thereby, prevent apprehension of Meridian's sole shareholder-president.

Commingling of Trust Funds to Conceal Failure to Provide Stop-Loss Coverage

4. At the direction of Meridian's sole shareholder-president, funds from the established participant groups were commingled with funds from new participant groups enrolling in Meridian's plan. Some of these commingled funds were then used to cover excess loss claims incurred by groups whose claims exceeded the monthly payments due from and made by them.

5. By using commingled funds to pay these excess loss claims, the sole shareholder-president was also able to and did conceal that, despite his continued representations and promises that stop-loss/re-insurance was included in Meridian's plan, such coverage was never obtained.

6. Despite his knowledge that Meridian had never obtained stop loss/re-insurance coverage, [respondent] gave both written and verbal assurances to Meridian's participant groups that their excess-loss claims were covered and would be paid by Meridian. In giving these assurances, [respondent] sought and intended to prevent detection of the scheme and apprehension of Meridian's sole shareholder-president.

Lulling Tactics to Perpetuate the Fraud

7. To prevent the scheme's detection and collapse, and assure the continued stream of incoming funds, Meridian's sole shareholder-president, along with [respondent] devised and implemented a series of lulling tactics designed to conceal Meridian's increasingly depleted funds and its inability to pay outstanding claims. These lulling tactics included false assurances of future payments, excuses for nonpayment, and the dissemination of a roster of false explanations to delay claim payments. As the result of denying and/or delaying payment,

> many providers refused treatment and/or medication to participants.
>
> 8. In response to inquiries from several state agencies responsible for regulating insurance companies in their jurisdictions, [respondent] reviewed and/or wrote letters on behalf of Meridian. In these responses, which were sent via the Postal Service, [respondent] falsely asserted that Meridian administered self-funded ERISA-complaint health benefit plans, was subject only to federal regulation and, therefore, was immune from state regulation, thereby seeking and intending to thwart apprehension of Meridian's sole shareholder-president.
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> 9. In the middle of 2003, based on the depletion of funds available to pay claims, Meridian filed for bankruptcy leaving approximately $15,000,000 in unpaid medical and related claims.
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> 10. On various dates between early 2000 and mid-2003, at Wayne, in the District of New Jersey and elsewhere, [respondent], knowing that an offense against the United States had been committed, namely mail fraud, as described in paragraph 2 through 9 above, in violation of Title 18, United States Code, Section 1341, did assist the offender, Meridian's sole shareholder-president, in the manner described in paragraph 3, 6 and 8, in order to hinder and prevent his apprehension, trial and punishment.
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> [Ex.C¶1b-¶10.]

At a May 3, 2006 hearing in the United States District Court for the District of New Jersey, respondent admitted that, between 1999 and 2003, he had actively participated in Ruth's scheme, and had later refused to cooperate with local insurance regulators in a number of states, including New Jersey, Florida,

Louisiana, Nebraska, and North Carolina. Respondent knew at the time that his actions were illegal.

On June 15, 2006, the Honorable Anne E. Thompson, U.S.D.J., sentenced respondent. At sentencing, respondent acknowledged that

> [b]eginning in 2001, and continuing on to 2003, I observed a business in disarray, and then I further observed the defendant, Ruth, lie, steal from people, do things he was not supposed to have done, and through out [sic] that course my focus was not on Ruth, my focus was on trying to fix the problem. In doing that, rather than going to Ruth, confronting him, stopping him, doing something, I allowed him to continue on. That is an accessory. That's a crime under the statute. And at the time, and I can't give you a date, Your Honor, but I know there was a line I crossed and at that time that I crossed that line I had the mens rea because I could have and should have done something to stop Ruth. There was probably nobody else in the company who could have done something to stop him, but me.
> And I didn't.
>
> THE COURT: And protected him?
>
> MR. ZANDER: I believe I did, Your Honor.
>
> [Ex.H31-18 to 21-11.]

Judge Thompson sentenced respondent to twenty-one months in prison, followed by one year of supervised release. The judge considered both aggravating and mitigating factors, in meting out the sentence. In aggravation, some victims had been denied necessary medical treatment, including chemotherapy, while others were forced to declare bankruptcy due to respondent's

actions. In mitigation, respondent cooperated with federal authorities in the Ruth investigation.

Judge Thompson also ordered respondent to make restitution in the amount of $24,678,000.62 on behalf of the 2,017 Meridian victims.[1]

For respondent's participation in the scam, the OAE seeks his disbarment.

Following a review of the record, we determine to grant the OAE's motion for final discipline.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's criminal conviction in New Jersey for being an accessory after the fact to mail fraud, in violation of 18 U.S.C.A. §3, constitutes a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The sanction imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the

[1] Ruth, jointly liable for the entire amount, was sentenced to eighty-four months in prison, with three years' supervised release thereafter.

"nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46. Discipline is imposed even when the attorney's offense is not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

Here, the crimes were directly related to the practice of law, committed in respondent's capacity as Meridian's in-house counsel. He acknowledged he was the only person in a position to prevent Ruth from perpetrating this massive fraud, yet he chose not to do so. Moreover, he affirmatively engaged in a campaign of false assurances to prop up the company's image and to assuage skeptical state insurance regulators across the nation.

Respondent argues that he did not directly "profit" from Ruth's criminal activities. But he did receive a benefit – a salary twice that of any he had previously received. In any event, the magnitude of the crimes committed here, which respondent facilitated, compels the sanction of disbarment.

Disbarment is also consistent with In re Druck, 163 N.J. 81 (2000) (attorney disbarred after pleading guilty to aiding and abetting wire fraud); In re Goldberg, 142 N.J. 557, 567 (1995) ("when a criminal conspiracy evidences 'continuing and prolonged, rather than episodic, involvement in crime,' is

'motivated by personal greed,' and involves the use of the lawyers' skills 'to assist in the engineering of the criminal scheme,' the offense merits disbarment."); In re Chucas, 156 N.J. 542 (1999).

Respondent's criminal conduct was "continuing and prolonged," spanning a period of several years, and was rooted in his position as a lawyer. He stood by as Ruth fleeced the company, driving it into bankruptcy and leaving in its wake $15 million in unpaid medical claims. Such a breach of the public trust must be met with the harshest sanction. We, therefore, recommend respondent's disbarment. Members Lolla and Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William O'Shaughnessy, Chair

By: Julianne K. DeCore
For Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ben J. Zander
Docket No. DRB 06-264

Argued: January 18, 2007

Decided: March 30, 2007

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy	X					
Pashman	X					
Baugh						X
Boylan	X					
Frost	X					
Lolla						X
Pashman	X					
Stanton	X					
Wissinger	X					
Total:	7					2

Julianne K. DeCore
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Chief Counsel